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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

OPPOSITION OF WORLDCOM, INC. TO  
PETITIONS FOR RECONSIDERATION OF  
THE FIRST REPORT AND ORDER

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**OPPOSITION OF WORLDCOM, INC. TO  
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THE FIRST REPORT AND ORDER**

WorldCom, Inc. ("WorldCom") hereby submits this Opposition to Petitions for Reconsideration filed by other parties on the First Report and Order in this proceeding. 1/ In particular, WorldCom strongly opposes the petitions of the Rural Telephone Coalition ("Rural Coalition") and the Rural Telephone Companies ("Rural Companies") (collectively the "Rural Carriers"), which ask the Commission to reconsider its decision to forbid the application of interstate access charges to the purchase of unbundled network elements ("UNEs"). The Commission has already strongly reaffirmed that decision in its order denying SBC's petition for a stay, 2/ and should do so again here.

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1/ *Access Charge Reform*, First Report and Order, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997) ("*Access Reform Order*").

2/ *Access Charge Reform*, Order, CC Docket No. 96-262, FCC 97-216 (rel. June 18, 1997) ("*Stay Order*").

## I. INTRODUCTION AND SUMMARY

In its Petition for Reconsideration, WorldCom asked the Commission to reconsider its decisions to set tandem switching rates primarily based on fully distributed costs, and to eliminate the unitary rate structure option for tandem-switched transport. WorldCom showed that, rather than looking forward to the future, these decisions fall back on discredited approaches from the past, and have results that are not cost-based, create uneconomic incentives for inefficiency, and unreasonably discriminate against both tandem-switched transport users and the smaller market and rural households and businesses they serve. 3/ We note that a number of other parties addressed similar concerns, and we generally endorse those parties' arguments on this topic. 4/

Our intent in filing this opposition, however, is not to restate our concerns regarding tandem switching rates, but to refute once again the unreasonable ILEC argument -- this time promoted by the Rural Carriers -- that interstate access charges should be applied as a surcharge on the cost-based rates for unbundled network elements. The Rural Carriers' proposal is analogous to an auto dealer requiring a customer that leases a new car to pay daily rental fees on top of its lease payments. The Commission, correctly, has recognized repeatedly that such an approach is totally unwarranted. The provision of unbundled network

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3/ WorldCom Petition at 2-21.

4/ See, e.g., CompTel Petition at 7-23; Excel Petition at 2-3; RCN Petition at 5-10; Sprint Petition at 8-9; Telco Petition; Telecommunications Resellers Ass'n Petition at 12-17; U.S. Long Distance Petition at 3-6.

elements is not the same thing as providing interstate access service, and there is no statutory basis for imposing access charges on carriers that pay cost-based rates for unbundled network elements.

Not only is there no statutory basis for the Rural Carriers' proposal, it is unsound from a policy perspective as well. Permitting the imposition of access charges on UNE customers would destroy the market-based approach to access charge reform adopted by the Commission in the *Access Reform Order*.

Furthermore, there is no evidence that IXC's will substitute UNEs for interstate access in any significant way, or that any such substitution will have a significant financial impact on ILEC's generally, and on rural ILEC's in particular. For all these reasons, the petitions filed by the Rural Carriers should be denied.

## **II. THE COMMISSION CORRECTLY CONCLUDED THAT ACCESS CHARGES MAY NOT BE IMPOSED ON CARRIERS PURCHASING UNBUNDLED NETWORK ELEMENTS.**

The Rural Carriers challenge the Commission's determination that incumbent local exchange carriers may not impose Part 69 access charges on carriers purchasing unbundled elements. The essence of the Rural Carriers' argument is that interstate access and unbundled elements are "like" services, and that there is no basis for establishing different pricing rules for each. <sup>5/</sup> According to the Rural Carriers, this supposed pricing disparity will enable IXC's to substitute UNEs for interstate access service. <sup>6/</sup> This in turn will allegedly reduce the level of

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<sup>5/</sup> Rural Coalition at 15-17; Rural Companies at 8-10.

<sup>6/</sup> Rural Coalition at 14; Rural Companies at 2.

implicit universal service support received by the Rural Carriers, and result in the Rural Carriers earning a non-compensatory rate of return. <sup>7/</sup> As we demonstrate below, nothing in either of these petitions warrants a change in the conclusion reached by the Commission in the *Access Reform Order*. The Commission once again should affirm that purchasers of UNEs may not be required to pay interstate access charges for the same facilities and features for which they have already paid cost-based UNE rates.

**A. The Provision Of Unbundled Network Elements Is Not “Like” The Provision Of Interstate Access.**

The cornerstone of the Rural Carriers’ argument is that the provision of unbundled network elements is “like” the provision of interstate access, and that the Commission is required under Section 201 and 202 of the Communications Act to permit comparable pricing for the two (i.e., the imposition of interstate access charges on purchasers of UNEs.) <sup>8/</sup> The fundamental flaw in this position is the failure of the Rural Carriers to recognize the distinction between services and elements under the 1996 Act. A carrier purchasing a service from an ILEC obtains only that particular service, either to resell in its entirety (in the case of retail services) or to combine with the requesting carrier’s own facilities or services (in the case of access.) An IXC purchasing access, for example, obtains the use of ILEC

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<sup>7/</sup> Rural Coalition at 14; Rural Companies at 13-15.

<sup>8/</sup> Rural Coalition at 15-17; Rural Companies at 8-10.

facilities for one purpose only -- the origination and termination of long distance calls.

In contrast, as the Commission found and the 8th Circuit affirmed, Section 251 of the 1996 Act permits a carrier purchasing unbundled elements to use those elements to provide any telecommunications service. <sup>9/</sup> Both the Commission and the court explicitly recognized that the risks and rewards of purchasing UNEs are not the same as purchasing bundled services, and that long distance carriers likely would pursue both options under the 1996 Act. <sup>10/</sup>

Indeed, the Rural Carriers' argument proves too much. If the provision of UNEs is "like" interstate access because the facilities used are the same for both, the same can be said for intrastate access and local exchange service. Certainly ILECs are not entitled to their tariffed rates for these services when they provide UNEs. But this is precisely what the Rural Carriers are suggesting should be the rule for interstate access.

The rule proposed by the Rural Carriers would completely void the cost-based pricing requirement of Section 252(d)(1) of the 1996 Act, as the 8th Circuit recognized in *CompTel v. FCC*. <sup>11/</sup> In *CompTel*, the court upheld the FCC's

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<sup>9/</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. August 8, 1996) ("*Interconnection Order*") at ¶ 292, *affirmed*, *Iowa Utilities Board v. FCC*, 1997 WL 403401 (8th Cir.) at \*26.

<sup>10/</sup> *Interconnection Order* at ¶ 331; *Iowa Utilities Board* at \*26.

<sup>11/</sup> *CompTel v. FCC*, 117 F.3d 1068, 1074-75 (8th Cir. 1997).

decision to permit the imposition of a portion of the interstate access charge on UNE customers for an interim period ending no later than when the FCC adopted universal service rules, “even though such charges on their face appear to violate the statute.” <sup>12/</sup> The court upheld the rules primarily because of their interim nature, and expressed the view that any support for universal service after the interim period would come from the universal service rules scheduled to go into effect on July 17, 1997, and not from access charges. <sup>13/</sup> It is apparent that the proposal advanced here by the Rural Carriers is completely inconsistent with the court’s decision in *CompTel*, and that the Commission’s decision to prohibit the collection of interstate access charges from UNE customers is sound.

**B. Imposition Of Access Charges On UNE Customers Will Destroy The Potential For Market-Based Access Charge Reform.**

In the *Access Reform Order*, the Commission established a “market-based” approach to access charge reform in lieu of relying solely on its power to prescribe lower access rates. <sup>14/</sup> The key premise behind the Commission’s market-based approach to access reform is that competitive pressure will be brought to bear on access rates as IXC’s can avoid such charges through the use of UNEs. As the Commission stated:

As competitive entry becomes increasingly possible, IXC’s that now purchase interstate switched access will be able to bypass those services where the

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<sup>12/</sup> *Id.*

<sup>13/</sup> *Id.*

<sup>14/</sup> *Access Reform Order* at ¶ 263.



prices (interstate access charges) do not reflect the economic costs of providing the underlying service. Those IXCs can do this by entering the local markets themselves as local exchange service providers, thereby self-providing interstate access services for their new local exchange service customers. 15/

The Commission has recognized on numerous occasions that the use of UNEs will be one of the primary vehicles by which IXCs will enter the local exchange market. Requiring CLECs to pay a rate for UNEs that exceeds the cost-based level mandated under the 1996 Act would substantially diminish the usefulness of UNEs as a vehicle for competitive entry. This in turn would make it impossible for local competition through the use of UNEs to place any competitive pressure on incumbent LEC access rates. The application of access charges as a surcharge on UNE prices would destroy any hope that market forces will reduce access charges to appropriate levels, or that full service competition will develop on a broad scale. As WorldCom has previously discussed in this docket, the Commission must prescribe cost-based access rates if market forces cannot bring access to cost. 16/ The Petitioners approach would eliminate the central pressure on access pricing, making prescription a necessity.

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15/ *Id.* at ¶ 265.

1616/ *See, e.g.,* WorldCom Comments at 89-90 (conditioning support for market-based approach on backstop that cost-based access charges be prescribed if cost-based UNEs are not implemented by January 1, 1999). The *Access Reform Order* recognized that such prescription may be necessary if local competition does not develop. *Access Reform Order* at ¶ 267.

In short, cost-based pricing of UNEs, preferably at a rate based on the FCC's TELRIC principles, is critical to the development of local competition, and the Commission's market-based approach to access charge reform. Accordingly, the Commission must reject the Rural Carriers attempts to depart from cost-based UNE pricing through the imposition of interstate access charges.

**C. The Harm Alleged By The Rural Carriers Is Totally Speculative And Does Not Justify Excess Recovery Of Costs.**

According to the Rural Carriers, the effect of not imposing interstate access charges on purchasers of unbundled elements will be to provide an incentive for IXC's to substitute cost-based UNEs for subsidy-laden interstate access service. <sup>17/</sup> This in turn will cause a substantial revenue shortfall for the ILECs -- rural ILECs in particular -- which will threaten universal service and produce non-compensatory rates of return. There are at least two major flaws in this theory, each of which provides an independent basis for rejecting the Rural Carriers' petitions.

First, the Rural Carriers provide no evidence that it will be economical for any IXC to substitute UNEs for interstate access. Interstate access rates are intended to recover the cost of the interstate portion of the facilities used, plus some indeterminable amount of implicit support for universal service. Rates for UNEs, on the other hand, are intended to cover the entire cost of the facilities plus a reasonable profit. Given the different cost recovery principles underlying interstate

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<sup>17/</sup> Rural Coalition at 14; Rural Companies at 2.

access charges and rates for UNEs, the assumption made by the Rural Carriers that UNE rates always will be lower than interstate access rates is not even remotely self-evident. This is confirmed by the fact that neither petition cites evidence that any IXC has requested UNEs solely for the purpose of completing long distance calls. 18/ Moreover, deaveraging of UNE rates, as recommended by the FCC, will help ensure that those rates adequately reflect the higher cost of serving rural areas. 19/ There simply is no basis for the blanket assertion that cost-based UNE rates established by state commissions will be non-compensatory.

Second, even assuming for a moment that the Rural Carriers are correct that it will be less expensive for an IXC to purchase UNEs instead of interstate access, neither petition demonstrates how this purported arbitrage opportunity will harm rural ILECs. The presumption underlying the Rural Carrier's argument is that a migration from interstate access to UNEs will cause a shortfall in the universal service subsidies that are now implicit in interstate access rates. 20/ Putting aside the fact that neither petition demonstrates with any specificity the amount of universal service subsidy actually implicit in current

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18/ There is some concern expressed that IXCs will achieve this result indirectly by purchasing access services from a CLEC that uses UNEs rather than from an ILEC. Rural Coalition at 19. Of course, a CLEC only will be in a position to provide access if it has captured a customer's local business, *i.e.*, if competition is working as Congress intended. It seems highly unlikely that a CLEC could make a business case for purchasing UNEs solely as a vehicle for providing access to IXCs.

19/ *Interconnection Order* at ¶ 764.

20/ Rural Coalition at 14-15; Rural Companies at 5-7.

interstate access rates, the fact remains that any shortfall will be temporary because the Commission already has established rules under which specific explicit universal service support mechanisms will be implemented, as mandated by the 1996 Act. Therefore, any IXC seeking to take advantage of an arbitrage opportunity would know that it will short-lived.

Moreover, an IXC may not be able to immediately take advantage of an arbitrage opportunity if one exists. Section 251(f)(1) requires a requesting carrier to make a "bona fide request" to the rural ILEC, which initiates a proceeding in which the state commission will consider whether to eliminate the rural exemption to the unbundling requirements of Section 251(c)(3). This proceeding could provide a rural carrier ample opportunity to explicitly demonstrate that universal service would be harmed by providing cost-based UNEs, although WorldCom does not concede that such an argument provides a sufficient basis to avoid providing access to unbundled elements. 21/ In addition, the time required to complete this process likely would limit, if not eliminate completely, the window of opportunity for an IXC to take advantage of the theoretical arbitrage situation created by the Commission.

In short, the alleged harm to the Rural Carriers is based on a chain of events that is highly speculative, to say the least. The Rural Carriers overstated fears simply reflect a fondness for the status quo and provide no basis for the

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21/ This is particularly true in light of the 8th Circuit's decision striking down the FCC's interpretation of Section 251(f)(1). *Iowa Utilities Board* at \*12.

Commission to reconsider its sound decision to prohibit ILECs from imposing interstate access charges on carriers purchasing unbundled elements.

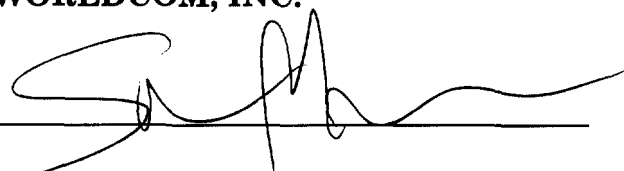
### **III. CONCLUSION**

For all the reasons described herein, the Commission should reaffirm its determination that ILECs may not impose interstate access charges on carriers purchasing ILEC unbundled network elements. In addition, the Commission should reconsider its decisions to set tandem switching rates primarily based on fully distributed costs, and to eliminate the unitary rate structure option for tandem-switched transport, as explained in WorldCom's petition for reconsideration.

Respectfully submitted,

**WORLDCOM, INC.**

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Dated: August 18, 1997

## **CERTIFICATE OF SERVICE**

I, Melissa Gross, hereby certify that a copy of the foregoing "Opposition of WorldCom, Inc. to Petitions for Reconsideration of the First Report and Order" was delivered this 18th day of August, 1997, by hand delivery or first class mail, to the following:

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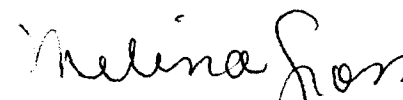
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